

6-2174032

Date **AUG 4 1976**

Fees \$ **80-**

ICC Washington, D. C.

RECORDATION NO. **8385-C** Filed & Recorded

AUG 4 1976 - 1 20 PM

INTERSTATE COMMERCE COMMISSION

The Honorable Robert L. Oswald
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

RECORDATION NO. **8385-D** Filed & Recorded

AUG 4 1976 - 1 20 PM

INTERSTATE COMMERCE COMMISSION

Re: Conditional Sale Agreement made as
of June 22, 1976, filed with the
ICC on June 28, 1976 at 11:20 a.m.
and assigned recordation number 8385

My dear Mr. Oswald:

Enclosed for filing with the Interstate Commerce Commission are 15 executed Counterparts of the following documents. (10 Counterparts of document 2).

1. Amendment and Restatement of Conditional Sale Agreement dated as of July 30, 1976 to the Conditional Sale Agreement dated as of June 22, 1976, between FMC CORPORATION, a Delaware corporation ("Builder"), 200 East Randolph Drive, Chicago, Illinois 60601, and FIRST SECURITY BANK OF UTAH, N.A., 79 South Main Street, Salt Lake City, Utah 84110, a national banking association, not in its individual capacity but acting solely as trustee under a Trust Agreement dated as of June 22, 1976 with FMC Finance Corporation, 200 East Randolph Drive, Chicago, Illinois 60601.

2. Lease of Railroad Equipment dated as of June 22, 1976 between SSI RAIL CORP., a Delaware corporation, Two Embarcadero Center, San Francisco, California 94111 ("Lessee") and FIRST SECURITY BANK OF UTAH, N.A. ("Lessor").



RECORDATION NO. **8385-B** Filed & Recorded

AUG 4 1976 - 1 20 PM

INTERSTATE COMMERCE COMMISSION

RECEIVED

AUG 4 1 15 PM '76

I. C. C.
FEE OPERATION BR.

August 3, 1976

RECORDATION NO. **8385-A** Filed & Recorded

AUG 4 1976 - 1 20 PM

INTERSTATE COMMERCE COMMISSION

Handwritten: Counterpart - Gary D. Utterback

The Honorable Robert L. Oswald
Page 2
August 3, 1976

3. Agreement and Assignment dated as of July 30, 1976 between Builder, and MANUFACTURERS HANOVER TRUST COMPANY, a New York banking corporation, 350 Park Avenue, New York, New York 10022 ("Assignee").

4. Assignment of Lease and Guaranty dated as of July 30, 1976 by Lessor to Assignee.

The above documents cover the following railroad equipment with the A.A.R. mechanical designation of "XM."

- 100 70-ton boxcars built by FMC Corporation and numbered APA 1850 through 1949 inclusive.
- 100 100-ton box cars built by FMC Corporation and numbered APA 1700 through 1799 inclusive.

Each boxcar is plainly, distinctly, permanently and conspicuously marked on each side in letters not less than one inch in height as follows: Owned by a Company under a Security Agreement filed under the Interstate Commerce Act, Section 20."

The obligations of Lessee under the Lease of Railroad Agreement are guaranteed by ITEL Corporation, One Embarcadero Center, San Francisco, California 94111, the parent company of Lessee.

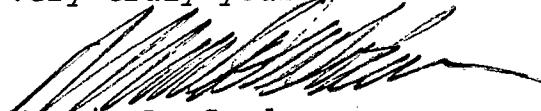
Also enclosed is my personal check in the sum of \$80.00 payable to the Interstate Commerce Commission being the prescribed fee for filing and recording the foregoing document..

Please return all additional copies of the enclosed counterparts not required by the Interstate

The Honorable Robert L. Oswald
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August 3, 1976

Commerce Commission to Allen H. Harrison, Jr. of Wilmer
Cutler & Pickering, who will be delivering this letter
on our behalf.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Martin D. Goodman', with a long, sweeping horizontal stroke extending to the right.

Martin D. Goodman
Secretary

MDG:bsk
Enclosures

AUG 1 1976 1 20 PM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASE AND GUARANTY

ASSIGNMENT dated as of July 30, 1976 by FIRST SECURITY BANK OF UTAH, N.A., a national banking association, not in its individual capacity but acting solely as trustee under a Trust Agreement dated as of June 22, 1976 with FMC Finance Corporation (said bank, so acting, being hereinafter called "Assignor" and FMC Finance Corporation being hereinafter called "Beneficiary"), to MANUFACTURERS HANOVER TRUST COMPANY, a New York banking corporation (hereinafter called "Assignee").

W I T N E S S E T H:

WHEREAS, FMC Corporation (hereinafter called "Builder") and Assignor have entered into a Conditional Sale Agreement dated as of June 22, 1976, as amended and restated as of the date hereof (said Agreement, as so amended and restated, being hereinafter called the "Conditional Sale Agreement"), providing for the construction, sale and delivery by Builder to Assignor and the purchase by Assignor from Builder of 200 railroad boxcars (hereinafter called the "Equipment"); and

WHEREAS, Assignor and SSI Rail Corp. (hereinafter called "Lessee") have entered into a Lease of Railroad Equipment dated as of June 22, 1976, providing for the lease of the Equipment by Assignor to Lessee; and Itel Corporation ("Itel"), the owner of all of the outstanding capital stock of Lessee, has entered into a Guaranty Agreement dated as of June 22, 1976, providing for the payment by Itel to Assignor of all sums of money payable by Lessee under said Lease of Railroad Equipment which are not paid when due; and

WHEREAS, Builder and Assignee are entering into an Agreement and Assignment of even date herewith (hereinafter called the "Agreement and Assignment"), providing for the assignment by Builder to Assignee of certain of the rights of Builder under the Conditional Sale Agreement; and

WHEREAS, Assignee's obligation to execute and deliver the Agreement and Assignment and to pay Builder the consideration therefor is conditioned upon, among other things, the execution and delivery by Assignor of this Assignment;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, Assignor does hereby sell, assign, transfer and set over to Assignee and its successors and assigns all the right, title and interest of Assignor in, to and under, and does hereby grant to Assignee and its successors and assigns a security interest in:

(a) the Lease of Railroad Equipment dated as of June 22, 1976 between Assignor and Lessee (hereinafter called the "Lease"), and all rents, issues, profits and proceeds thereof (except for the payment provided for in the last sentence of the first paragraph of Section 3 of the Lease), including, without limitation, (i) except as aforesaid, all moneys due and to become due to Assignor under or in connection with the Lease, whether as rent, Casualty Value, indemnities, liquidated damages, interest, claims for damages or otherwise, (ii) all rights and powers of Assignor under the Lease to exercise any option, to consent or make any waiver or agreement or to take any other action, and (iii) all rights and claims of Assignor to insurance proceeds with respect to the Equipment leased under the Lease; and

(b) the Guaranty Agreement dated as of June 22, 1976 by Itel in favor of Assignor (hereinafter called the "Guaranty"), and all proceeds thereof (except for any amount payable thereunder in connection with the guaranty of the payment provided for in the last sentence of the first paragraph of Section 3 of the Lease), including, without limitation, (i) except as aforesaid, all moneys due and to become due to Assignor under or in connection with the Guaranty, whether as payments thereunder, claims for damages or otherwise, and (ii) all rights and powers of Assignor under the Guaranty to exercise any option, to consent or make any waiver or agreement or to take any other action.

1. This Assignment is given as collateral security for the payment by Assignor to Assignee of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) together with interest thereon and all other amounts payable by Assignor under the Conditional Sale Agreement and the performance of all of Assignor's obligations contained therein (all of such Indebtedness, interest, other amounts and obligations being herein collectively called the "Obligations").

2. Assignor hereby irrevocably authorizes and directs Lessee and Itel to pay all rent and all other amounts due or to become due under or in connection with the Lease or

the Guaranty directly to Assignee at its office at 350 Park Avenue, New York, New York or to such other person or at such other address as Assignee may from time to time designate in writing. If Assignor shall receive any payments under or in connection with the Lease or the Guaranty or otherwise assigned hereunder, such payments shall be held by Assignor in trust for Assignee, shall be segregated from other funds of Assignor and shall, forthwith upon receipt by Assignor, be turned over to Assignee or its agent in the same form as received by Assignor (except for the endorsement of Assignor when required).

3. All moneys received by Assignee by reason of this Assignment (whether from Lessee, Itel, Assignor or otherwise) shall be held by Assignee and applied to the payment of the Obligations as and when they become due and payable, whether by maturity, prepayment, acceleration or otherwise; provided, however, that so long as no Default under the Conditional Sale Agreement, or event which with notice or lapse of time or both would constitute such a Default, has occurred and is continuing, any moneys so received by Assignee in excess of the amount of the Obligations then due shall be paid over to Assignor, free of this Assignment, not later than one business day after receipt thereof by Assignee, by transfer of funds immediately available to Beneficiary. Upon the occurrence of a Default under the Conditional Sale Agreement, Assignee shall have all of the rights and remedies of a secured party under the Uniform Commercial Code of the State of New York.

4. Assignor hereby represents and warrants to Assignee that (i) the Lease is in full force and effect and enforceable against Lessee in accordance with its terms, and neither Assignor nor Lessee is in default thereunder; (ii) the Guaranty is in full force and effect and enforceable in accordance with its terms, and Itel is not in default thereunder; (iii) no rent or other payment under the Lease or the Guaranty has been received by Assignor; and (iv) Assignor has not heretofore assigned or otherwise disposed of or encumbered any of its right, title or interest in, to or under the Lease or the Guaranty or any moneys due or to become due thereunder or by reason thereof or any other moneys subject to this Assignment, and Assignor has full right, power and authority to transfer to Assignee absolute title to Assignor's right, title and interest in, to and under the Lease and the Guaranty and in and to all such moneys.

5. Assignor hereby covenants that it will not, without the prior written consent of Assignee, agree to any modification or amendment of the Lease or the Guaranty or

waive or release any obligation of Lessee under the Lease or of Itel under the Guaranty, or fail promptly and diligently to exercise each and every right which it may have under the Lease and the Guaranty (except the right to terminate the Lease or the Guaranty).

6. Assignor further covenants that it will not, so long as this Assignment shall remain in effect, (i) create or permit to exist any lien, pledge, assignment, charge, encumbrance or security interest on or with respect to any of the rights and interests hereby assigned by it, except in favor of Assignee, or (ii) agree to or permit any payment in advance of the quarterly installments of rent payable under the Lease.

7. It is expressly agreed that, anything herein contained to the contrary notwithstanding, (i) Assignor shall remain liable to perform and observe all of its obligations and agreements under the Lease and the Guaranty, (ii) the obligations and agreements of Assignor under the Lease and the Guaranty may be performed by Assignee or its nominee or agent without releasing Assignor therefrom, and (iii) Assignee shall not have any obligation or liability under the Lease or the Guaranty by reason of, or arising out of, this Assignment or be obligated to perform any of the obligations or agreements of Assignor thereunder or to make any payment or to make any inquiry of the nature or sufficiency of any payment received by Assignor or Assignee or its agent or to present or file any claim or to take any other action to collect or enforce any payment assigned hereunder or to which Assignee may be entitled hereunder at any time or times.

8. Assignor hereby constitutes Assignee and its successors and assigns Assignor's true and lawful attorneys, irrevocably, with full power and authority (in the name of Assignor or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all rent and other moneys and any and all claims for rent and other amounts due and to become due at any time under, or arising out of, the Lease or the Guaranty, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which Assignee may deem to be necessary or advisable in the premises.

9. Assignor agrees that at any time and from time to time, upon the written request of Assignee, Assignor will promptly and duly execute, deliver and record or file any and all such further instruments and documents as Assignee may

reasonably request in order to obtain the full benefits of this Assignment and of the rights and powers herein granted, including, without limitation, the execution, delivery and filing of financing statements under the Uniform Commercial Code in such jurisdictions as Assignee may now or hereafter from time to time request. Assignor hereby also authorizes Assignee to file any such financing statements without the signature of Assignor to the extent permitted by applicable law.

10. All rights, powers and remedies granted to the Assignee hereunder and under the Conditional Sale Agreement shall be cumulative, may be exercised singly or concurrently and shall not be exclusive of any rights or remedies provided by law. This Assignment may not be changed orally and shall be governed by and construed and interpreted in accordance with the laws of the State of New York.

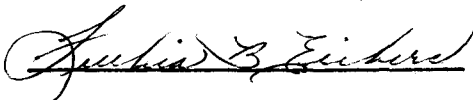
IN WITNESS WHEREOF, the undersigned has caused these presents to be properly executed as of the day and year first above written.

FIRST SECURITY BANK OF UTAH, N.A.,
not in its individual capacity
but acting solely as trustee
under a Trust Agreement dated
as of June 22, 1976 with FMC
Finance Corporation

By 

[Corporate Seal]

Attest:



STATE OF UTAH)
 : SS.:
COUNTY OF SALT LAKE)

On this *2d* day of *August*, 1976, before me personally appeared *Robert S. Clark*, to me personally known, who, being by me duly sworn, says that he is an authorized officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.



Notary Public

[Notarial Seal]

My Commission Expires: *11-18-79*

CONSENTS TO ASSIGNMENT

The undersigned, SSI RAIL CORP., hereby acknowledges notice of and consents to the foregoing Assignment and agrees that (1) it will make payment of all moneys due and to become due from it under or in connection with the Lease referred to in said Assignment directly to Manufacturers Hanover Trust Company at its office at 350 Park Avenue, New York, New York or to such other person or at such other address as Manufacturers Hanover Trust Company may from time to time designate to the undersigned in writing, and (2) each such payment shall be final, and the undersigned will not seek to recover from Manufacturers Hanover Trust Company for any reason whatsoever any moneys paid to it by virtue of said Assignment and this Consent to Assignment.

Dated: July 30, 1976

SSI RAIL CORP.

[Corporate Seal]

Attest:



By 

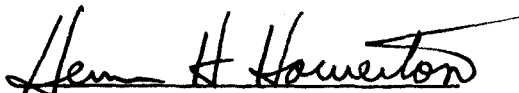
The undersigned, ITEL CORPORATION, hereby acknowledges notice of and consents to the foregoing Assignment and agrees that (1) it will make payment of all moneys due and to become due from it under or in connection with the Guaranty referred to in said Assignment directly to Manufacturers Hanover Trust Company at its office at 350 Park Avenue, New York, New York or to such other person or at such other address as Manufacturers Hanover Trust Company may from time to time designate to the undersigned in writing, and (2) each such payment shall be final, and the undersigned will not seek to recover from Manufacturers Hanover Trust Company for any reason whatsoever any moneys paid to it by virtue of said Assignment and this Consent to Assignment.

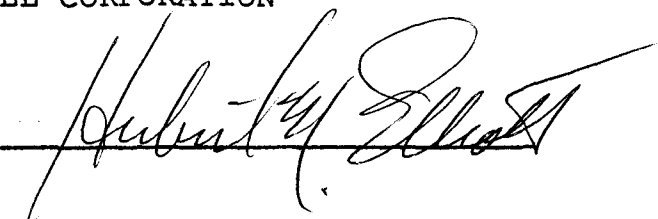
Dated: July 30, 1976

ITEL CORPORATION

[Corporate Seal]

Attest:



By 

STATE OF CALIFORNIA

)

: ss.:

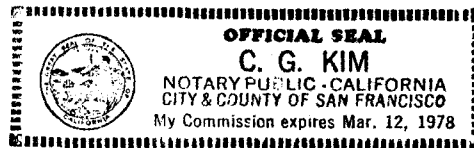
CITY AND COUNTY OF SAN FRANCISCO)

On this 2nd day of August, 1976, before me personally appeared PATRICK B. McMANUS, to me personally known, who, being by me duly sworn, says that he is the President of SSI RAIL CORP., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

My Commission Expires: 3.12.78

C. H. Kim
Notary Public



STATE OF CALIFORNIA

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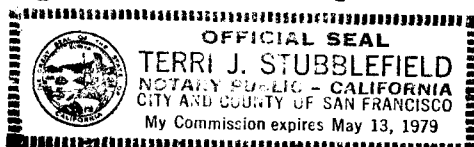
: ss.:

CITY AND COUNTY OF SAN FRANCISCO)

On this 2nd day of August, 1976, before me personally appeared HERBERT M. ELLIOTT, to me personally known, who, being by me duly sworn, says that he is the VICE President of ITEL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

My Commission Expires: 5/13/79



Terri J. Stubblefield
Notary Public